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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,164	04/03/2001	Frank Duimovich	136P17US01	2393
23322	7590	07/08/2005	EXAMINER	
IPLM GROUP, P.A. POST OFFICE BOX 18455 MINNEAPOLIS, MN 55418			PEREZ DAPLE, AARON C	
		ART UNIT		PAPER NUMBER
				2154

DATE MAILED: 07/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/825,164	DUIMOVICH ET AL.	
	Examiner	Art Unit	
	Aaron C. Perez-Daple	2154	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 3/8/05.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14, 16, 18-24 and 26-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-14, 16, 18-24 and 26-51 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Action is in response to Amendment filed 3/8/05, which has been fully considered.
2. Claims 1-14, 16, 18-24, and 26-51 are presented for examination.
3. This Action is Final.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. **Claims 1, 2 and 4-12** are rejected under 35 U.S.C. 102(e) as being anticipated by Reps et al. (US 6,070,190) (hereinafter Reps).
6. As for claim 1, Reps discloses a method of managing a data access system configured to transfer data over a communication network between a server system (servers 104, Fig. 1) and a plurality of user sites (illustrative client computer 106, Fig. 1) in response to requests from network browsers at the user sites, the method comprising:

monitoring a network browser of a first user site of the plurality of user sites to obtain performance data of the data access system, the performance data being indicative of a data transfer operation in the data access system performed in response to a network browser request initiated by a user of the first user site, the monitoring being controlled by a

monitoring agent (AMA probe) resident at the first user site (col. 9, line 59 – col. 10, line 28; col. 17, lines 45-63);

transmitting data indicative of the monitored performance data from the monitoring agent (col. 6, lines 15-31);

receiving performance data transmitted from said performance monitor agents (col. 5, lines 24-42; col. 6, lines 15-31);

selecting a quantity of data received (col. 6, lines 15-54);

summarizing the quantity of data received (col. 6, lines 15-54); and

storing said summarized quantity of data into a database (col. 6, lines 15-31).

7. As for claim 2, Reps discloses the method of claim 1 wherein the quantity of data selected represents performance of the data access system for a specific time interval (col. 6, lines 15-54; col. 23, lines 5-18; Fig. 10).

8. As for claim 4, Reps discloses the method of claim 3 wherein the performance data includes a timestamp identifying a time when the performance data was observed and wherein the selecting comprises collecting data that was observed during the same time interval (timestamp means is considered inherent for associating the data with a time interval; col. 6, lines 15-54; col. 23, lines 5-18; Figs. 8 and 10).

9. As for claim 5, Reps discloses the method of claim 1 further comprising, before receiving the performance data:

receiving data indicative of the performance of a plurality of data access systems from a plurality of performance monitoring agents disposed at the plurality of user sites (col. 6, lines 37-54); and

filtering said data received to pertain to a selected data access system (col. 6, lines 37-54).

10. As for claim 6, Reps discloses the method of claim 1 wherein the performance data is correlated to factors of interest (col. 6, lines 15-54; Figs. 8 and 10).

11. As for claim 7, Reps discloses the method of claim 1 wherein the server system comprises at least one Hyper Text Transfer Protocol (HTTP) server (col. 8, lines 56-64).

12. As for claim 8, Reps discloses the method of claim 7 wherein the performance data comprises a summary of performance metrics for a HTTP page (col. 8, lines 56-64).

13. As for claim 9, Reps discloses the method of claim 1 further including the step of using the stored summarized data as a basis for ascertaining quality of service conditions of said data access system (col. 6, lines 15-54; Figs. 8 and 10).

14. As for claim 10, Reps discloses the method of claim 1 further including the step of calculating further summarized data using said stored summarized data (col. 6, lines 15-54).

15. As for claim 11, Reps discloses a performance management system for managing a data access system configured to transfer data between over a communication network between a server system (servers 104, Fig. 1) and a plurality of user sites (illustrative client computer 106, Fig. 1) in response to requests from said user sites, the performance management system comprising:

means for monitoring a network browser of a first user site of the plurality of user sites to obtain performance data of the data access system, the performance data being indicative of a data transfer operation in the data access system performed in response to a network browser request initiated by a user of the first user site, the monitoring means including a monitoring

agent (AMA probe) resident at the first user site configured to transmit data indicative of the performance data (col. 6, lines 15-31; col. 9, line 59 – col. 10, line 28; col. 17, lines 45-63);

means for receiving the data indicative of the performance of the data access system transmitted from the performance monitor agent (col. 5, lines 24-42; col. 6, lines 15-31);

means for selecting a quantity of data received (col. 6, lines 15-54);

means summarizing the quantity of data received (col. 6, lines 15-54);

means for storing the summarized quantity of data into a database (col. 6, lines 15-54);

and

means for utilizing said the stored summarized data as a basis for ascertaining quality of service conditions of the data access system (col. 6, lines 15-54).

16. As for claim 12, Reps discloses a performance management system that monitors data transferred between at least one remote site and at least one user site, comprising:

a network browser disposed on a first user site of the at least one user site and configured to browse the at least one remote site for transferring data between the at least one remote site and the first user site (col. 17, lines 45-63);

a client (AMA probe, Fig. 1) that resides on the first user site of the at least one user site (client computer 106, Fig. 1) and is configured to collect performance data indicative of a data transfer operation affecting data transfer between the first user site and the at least one remote site (servers 104, Fig. 1) (col. 5, lines 17-23; col. 9, line 59 – col. 10, line 28); and

an agent in communication with the client and residing on the first user site, the agent being adapted to create preliminary summary data of the performance data (col. 5, lines 38-42; col. 6, lines 1-5; col. 6, lines 19-31).

Claim Rejections - 35 USC § 103

17. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

18. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over Reps. Reps does not specifically disclose that the time interval is 15 minutes. However, Reps teaches that the time scale may be varied by the user in order to view the system performance over specific time intervals (col. 12, lines 16-27; col. 23, lines 5-18; sampling interval, Fig. 3; Figs. 7 and 12). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by setting the time interval to 15 minutes in order to observe system performance on a relatively fast time scale.

19. **Claims 13-51** are rejected under 35 U.S.C. 103(a) as being unpatentable over Reps et al. (US 6,070,190) (hereinafter Reps) in view of Killian (US 6,438,592 B1) (hereinafter Killian).

20. As for claim 13, Reps discloses a performance management system that monitors data transferred between at least one remote site and at least one user site, comprising:
a network browser disposed on a first user site of the at least one user site and configured to browse the at least one remote site for transferring data between the at least one remote site and the first user site (col. 17, lines 45-63); and

a client application residing on the at first user site of the at least one user site, the client application comprising:

a data gathering module that is adapted to collect performance data, wherein the performance data is indicative of data transfer operations, that affect data transfer between the first user site and the at least one remote site, initiated by network browser requests initiated by a user of the first user site and that includes at least communication data indicative of network statistics for data transfers and application data indicative of statistics of the network browser, the performance data being associated with individual web page object retrievals (col. 5, lines 17-23; col. 6, lines 19-54; col. 9, line 59 – col. 10, line 28); and an agent that is adapted to create preliminary summary data from at least the performance data, wherein the preliminary summary data includes summaries of at least the individual *object* retrievals from the at least one remote site (servers 104, Fig. 1; col. 5, lines 38-42; col. 6, lines 1-5; col. 6, lines 19-31); and

at least one server that is configured to receive the preliminary summary data from the client application (col. 6, lines 15-31).

Because Reps teaches capturing performance data associated with the transfer of HTML based applications over the internet (col. 8, lines 56-64), it may be argued that Reps inherently teaches capturing performance data associated with web page object retrievals. However, Reps does not explicitly teach capturing performance data associated with web page object retrievals. Killian teaches capturing performance data associated with web page object retrievals (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by capturing performance data associated

with web page object retrievals in order to improve the performance provided by web servers to client computers, as taught by Killian (col. 3, lines 20-22).

21. As for claim 14, Reps teaches the performance management system according to claim 13, wherein the client application is adapted to simultaneously integrate with at least a network level interface and an application level interface (col. 5, lines 17-62).
22. As for claim 16, Reps teaches the performance management system of claims 14 and 13, wherein the client application is adapted to combine the collected performance data gathered from the network level interface and the application level interface into a single page performance record (col. 5, lines 17-62).
23. As for claim 18, Reps teaches the performance management system according to claim 13, wherein the received performance data is used to determine overall usage of a data access system (Figs. 8-10).
24. As for claim 19, Reps teaches the performance management system according to claim 13, wherein the received performance data is used to ascertain a quality of service based on an aggregated end user response to a data access system (Figs. 8-10).
25. As for claim 20, Reps teaches the performance management system according to claim 13, wherein the received performance data is used to analyze aggregated end user response based on actions taken within a data access system and wherein the aggregated end user response is used to infer user behavior (col. 6, line 66 – col. 7, line 13).
26. As for claim 21, Reps teaches the performance management system according to claim 20, wherein the at least one server is configured to use the received performance data is used to produce reports of the received data (col. 5, lines 39-45).

27. As for claim 22, Reps teaches the performance management system according to claim 13, wherein the client application is adapted to buffer page performance measurements for transmission or internal assessment (col. 5, lines 39-45).
28. As for claim 23, Reps teaches the performance management system according to claim 22, wherein the client application is adapted to transmit the buffered page performance measurements in response to instruction from the at least one monitoring server or in response to the internal assessment (col. 5, lines 39-45).
29. As for claim 24, Reps teaches the performance management system according to claim 13, wherein the client application is adapted to respond to and transmit a configurable number of subsequent page performance measurements based on a set of received rules including a number of pages to transmit or a duration of time to transmit subsequent pages (col. 5, lines 43-62).
30. As for claims 29-37, 40 and 42-45, under the interpretation presented above under the 35 U.S.C. 112, second paragraph, rejection, the Examiner finds that by teaching the use of configuration information to adjust the specific monitoring parameters, Reps meets all the limitations of the claims. See col. 11, line 42 – col. 12, line 27.

Reps does not appear to explicitly teach a client application receiving instructions from a server. However, Killian explicitly teaches a client application receiving instructions from a monitoring server in order to adjust the monitoring parameters for specific web objects (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by receiving instructions from a server at a client application in

order to optimize the monitoring parameters for specific web objects, as taught by Killian (col. 3, lines 47-63).

31. As for claims 26-28, although Reps teaches requesting and caching objects for configurable period of time, Reps does not specifically teach that the objects may comprise graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames. Killian teaches performance monitoring for objects comprising graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by using objects comprising graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames in order to monitor performance parameters for specific web objects, as taught by Killian (col. 3, lines 47-63).

32. As for claims 38, 39 and 41, although Reps teaches a graphical user interface communicating metrics associated with object retrievals (Figs. 8-10), Reps does not specifically disclose that the objects may comprise web page objects. Killian teaches obtaining metrics for web page object retrievals in order to monitor performance parameters for specific web objects (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by communicating metrics associated with web page object retrievals in order to monitor performance parameters for specific web objects, as taught by Killian (col. 3, lines 47-63).

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33. As for claim 46, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to collect, aggregate, and display performance data associated with predefined individual objects measured by the agent (col. 6, lines 15-54).
34. As for claim 47, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to store, display and determine trends based on performance data that is associated with individual objects measured by the agent (col. 6, line 15 – col. 7, line 13; Figs. 8-10).
35. As for claim 48, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to collect and aggregate performance data for comparison to predefined performance based threshold settings (col. 5, lines 63-67).
36. As for claim 49, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to create, store, and evaluate performance thresholds settings based on at least one of metric values, metric value percentage differences, direct metric comparison with other metrics, historical metric values, and metric value rate of change calculations (col. 5, line 63 – col. 6, line 62).
37. As for claim 50, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to monitor performance threshold settings and, if predetermined values are exceeded, provide automated user indications including at least one of email alerts, pager alerts, user interface notifications, and network level diagnostic operations (col. 5, lines 63-67).

38. As for claim 51, Reps does not explicitly disclose stopping the data transfer operation at the request of a user. However, the Examiner finds that this is inherent to the network browser disclosed by Reps (col. 17, lines 45-63). That is, any standard network browser includes a function for stopping data transfer operations (e.g. the “stop” button in Internet Explorer), as would be apparent to one of ordinary skill in the art.

Response to Arguments

112, First Paragraph, Claim Rejections

39. The rejections of claims 12-50 under 35 USC 112, first paragraph, are hereby withdrawn in view of Amendment and Remarks filed 3/8/05.

112, Second Paragraph, Claim Rejections

40. The rejections of claims 12-50 under 35 USC 112, second paragraph, are hereby withdrawn in view of Amendment and Remarks filed 3/8/05.

102 Claim Rejections

41. Applicant's arguments filed 3/8/05 have been fully considered but they are not persuasive.

On pages 15 and 16, Applicant asserts that Reps fails to teach, disclose or suggest monitoring a network browser to obtain performance data indicative of a data transfer operation performed in response to a browser request as recited in claim 1. The Examiner respectfully disagrees. In col. 9, line 59 – col. 10, line 28, Reps teaches a monitoring agent (AMA probe) for monitoring a client application on a client computer. Reps specifically

points out that a *session* is established in precisely the same manner as a normal customer transaction on the network. Although suggested by the use of the term “session,” Reps does not specifically disclose in this passage that the *client application* may comprise a *network browser*. However, in col. 17, lines 45-63, Reps specifically discloses one such client application comprising a network browser for exchanging data over the network. Therefore, a client application comprising a network browser is explicitly contemplated by Reps, and monitoring a network browser with a monitoring agent at the client falls within the scope of the teachings. Therefore, claim 1 is properly rejected under 35 USC 102.

Although not relied upon for the rejection, it would also have been immediately obvious to one of ordinary skill in the art at the time of the invention that the client application of Reps may comprise a network browser. Killian, for example, explicitly teaches monitoring a network browser in col. 3, lines 23-46.

With respect to dependent claim 5, Applicant asserts that Reps fails to disclose receiving and filtering data from a plurality of performance monitoring agents at a plurality of data access systems. The Examiner respectfully disagrees. Col. 6, lines 37-54 particularly contemplates receiving data from “one or more client-based probes” and filtering this data for a selected one or more data access systems. Therefore, claim 5 is properly rejected under 35 USC 102.

Claims 11 and 12 are properly rejected under 35 USC 102 for the same reasons cited above with respect to claim 1. Moreover, the Examiner finds that Applicant’s description of Reps is a mischaracterization of the reference. Although Reps does include a teaching of formatting the probes, this is by no means the extent of the teachings nor even the primary

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focus of Reps. The primary purpose of Reps is establishing monitoring applications on one or more devices in a network and providing reports on network performance using these monitoring applications. Thus, Reps is directly analogous art to the present invention.

103 Claim Rejections

42. Applicant's arguments filed 3/8/05 have been fully considered but they are not persuasive.

On pages 17-18, Applicant asserts that the combination of Reps and Killian is improper. The Examiner respectfully disagrees. The proper test for a 103 rejection is what the combined teachings would suggest to one of ordinary skill in the art and not whether or not the references can be combined. Killian is relied upon only to teach capturing performance data associated with web objects. Furthermore, Killian is clearly analogous art dealing with performance monitoring on a network. Therefore, the combination is proper.

With respect to Applicant's arguments found at the bottom of page 18, the limitations of claim 13 are properly anticipated by Reps for the same reasons cited above with respect to claim 1.

Conclusion

43. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

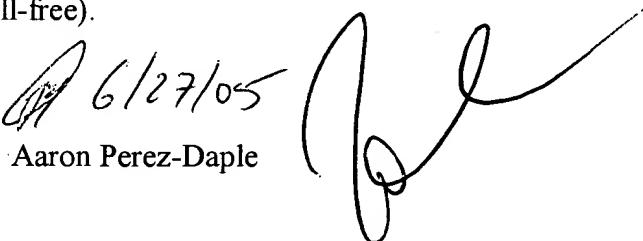
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

44. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron C. Perez-Daple whose telephone number is (571) 272-3974. The examiner can normally be reached on 9am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on (571) 272-3964. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


6/27/05
Aaron Perez-Daple